

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ANTONIO ORTIZ</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 217,252 & 217,564
<b>NATIONAL BEEF PACKING CO., L.P.</b>	)	
Respondent	)	
AND	)	
	)	
<b>WAUSAU INSURANCE COMPANIES</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the April 10, 2000 Decision entered by Administrative Law Judge Pamela J. Fuller. The Appeals Board heard oral argument on September 13, 2000.

**APPEARANCES**

Stanley R. Ausemus of Emporia, Kansas, appeared on behalf of claimant. D. Shane Bangerter of Dodge City, Kansas, appeared on behalf of respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board considered the record and adopts the stipulations listed in the April 10, 2000 Decision of the Administrative Law Judge.

**ISSUES**

Judge Fuller determined that claimant's injuries constituted a traumatic hernia and, therefore, awarded claimant temporary total disability compensation and medical benefits under K.S.A. 44-510d(a)(22) (Furse 1993). Claimant asks the Board to review the finding of nature and extent of claimant's disability, contending that he has suffered a disability to the body as a whole and is entitled to permanent partial disability benefits. Nature and extent of disability is the only issue before the Board on this review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After considering the entire record, the Board finds that the Decision entered by the Administrative Law Judge should be affirmed.

The Board agrees with the conclusion of the ALJ that claimant sustained hernia injury but has not proven permanent neurological injury resulted from the surgeries. Therefore, claimant is limited to temporary total disability compensation and medical benefits under the provisions of K.S.A. 44-510d(a)(22). This conclusion is based upon the greater weight of the credible testimony and, in particular, the testimony of the treating physicians, Dr. Charles McElhinney and Dr. Raymundo Villaneuva.

Charles McElhinney, M.D., is a board certified general surgeon. He first saw claimant April 9, 1996 for complaints of left groin pain and swelling. This was after the hernia repair performed by Dr. Kenoyer in November of 1995. He performed surgery on April 30, 1996 for a small recurrent direct inguinal hernia, which he repaired. He also freed the ilioinguinal nerve from scar tissue, noting that the nerve was intact. Dr. McElhinney continued to follow claimant after the surgery. Claimant improved at first, but subsequently reported having pain when lifting or pulling heavy objects and having tenderness in the testicle. Dr. McElhinney could not detect a recurrent hernia and the testicle appeared normal. He last saw claimant in February of 1997. Because of continued complaints, claimant was referred to Dr. Richardson, a urologist, and to Dr. Villaneuva, a physiatrist. No deposition of Dr. Richardson was taken. In the opinion of Dr. McElhinney, claimant did not have any nerves damaged in either surgery. He noted only the ilioinguinal nerve to be entrapped when he operated on claimant and he performed a release of that nerve. Dr. McElhinney agreed that it would be possible for scar tissue to again grow and entrap the ilioinguinal nerve but that it was his understanding from Dr. Villaneuva's notes that claimant's symptoms improved.

Raymundo Villaneuva, M.D., is a specialist in physical medicine and rehabilitation in Dodge City, Kansas. He first saw claimant on November 25, 1997 for complaints of pain in the left ilioinguinal area and some pain and numbness on the left anterior thigh. Dr. Villaneuva continued to treat claimant thereafter, seeing him on several occasions until May 5, 1998 when he determined claimant was at or near normal and released him from further treatment. At that time claimant stated that he was now without pain except when the temperature is cold and described the pain then as mainly a discomfort. Claimant stated that his left side felt normal and equal when compared to his right side. Claimant also reported some soreness at the sight of his surgical incision at the end of the work day. Upon physical examination, Dr. Villaneuva reported "The sensation is practically back to normal. Only close to the groin he still feels somewhat different. But he can feel.

Cremasteric reflex is normal." Dr. Villaneuva's impression was that claimant was now "practically back to normal. No more pain, normal sensation."<sup>1</sup>

Subsequent to his release, Dr. Villaneuva was able to observe claimant working at the hospital. Claimant did not appear to have any difficulty performing his job tasks, nor did he appear to be in any pain. Dr. Villaneuva would talk to claimant and ask him how he was doing. Claimant stated that he was doing fine.

Dr. Villaneuva stated "his last examination shows a person that has gone back to normal with no signs or symptoms of nerve damage . . ."<sup>2</sup> As of the date of his last examination he would not give claimant any permanent impairment rating. Furthermore, in his opinion it would not be possible for claimant's condition to have worsened after his release.

Q. Is it possible that after your last visit that his condition was worsened?

A. No.

Q. Why do you say that?

A. Because our body doesn't work like a switch that you can put on or you can put off. When you have a nerve entrapment, you have a nerve damage. The healing period comes and takes a period of time. During that period of time, after the trauma or after the entrapment, whatever the damage was place[d] upon the nerve, that's when you have signs and symptoms. When the healing period ends, if the healing – if during the healing period there is some permanent damage, then the person remains with that permanent damage; it doesn't change. But when it comes to a point that on a physical examination, a physician doesn't find and the person doesn't tell about symptoms, then the healing period is finished and the functionality has gone back to normal. So you will need another trauma, you will need another problem in order to give symptoms back.<sup>3</sup>

Dr. Villaneuva further testified that any atrophy of claimant's left testicle would not be related to nerve entrapment. Testicle atrophy is usually secondary to infection and, in his opinion, would not be related to claimant's hernia surgery. Likewise, Dr. Murati did not relate atrophy of the testicle, if there was any, to the hernia surgeries.

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<sup>1</sup> Villaneuva Deposition Exhibit 1, report dated May 5, 1998.

<sup>2</sup> Villaneuva Deposition at 9.

<sup>3</sup> Villaneuva Deposition at 9-10.

The Board adopts the findings and conclusions of the Administrative Law Judge relating to the nature and extent of claimant's injuries and the conclusion that claimant is limited to benefits as provided by the scheduled injury statute. Because of that finding and conclusion, the Board does not reach the issue of whether claimant has sustained any loss of ability to perform work tasks or whether there is a difference in his pre- and post-injury earnings.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Decision dated April 10, 2000, entered by Administrative Law Judge Pamela J. Fuller should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2001.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

**DISSENT**

I respectfully disagree with the majority. Based upon the testimony of Dr. Jennifer Finley, whom the Judge appointed to perform an independent medical evaluation, I believe claimant is entitled to receive permanent partial disability benefits for the complications for his hernia repair.

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BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS  
D. Shane Bangerter, Dodge City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director